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A TALE OF TWO TRANSPOSITION PRACTICES

INTERNATIONAL MARITIME LEGISLATION IN A NATIONAL ADMINISTRATION

Abstract:

Does the European Union engender practices within national administrations that represent a departure from traditional intergovernmental executive orders? Are European and global issues compartmentalized in a national administration in such a way as to create different implementation practices within the same administrative organization? In this paper I discuss the results from a case-study of a national administration's practice of transposing or incorporating rules stemming from two international levels – the global and the regional. Through in-depth interviews with national officials in the Norwegian Maritime Directorate and its parent ministry responsible for maritime affairs I reveal how different international enforcement capacities and nationally institutionalized practices are connected to different organizational practices and varying degrees of politicization within a national administration. This in turn is taken to represent different executive orders in Europe. In turn, these findings may tell us more about the potential for how the European administrative system in a global, multi-level context can appropriate national administrative capacity, and the ways in which national agencies may end up serving two or more 'masters' at once.

SET SAIL! – an introduction

How is European Union (EU) legislation implemented at the national level? What processes lead to different results for different legislation? Are national administrations becoming part of a wider European administrative system? If so, why? These questions form part of the wider research agenda on Europeanization (Goetz 2000) and often fall under the heading of ‘implementation research’. As Treib (2008) has shown in his review of EU implementation research, the answers to these questions are quite often given by looking at statistics on national transposition¹ of EU rules into national legislation, i.e. how national administrations are faring when it comes to converting EU legislative acts into national ones.

As the European Commission keeps a detailed tally of how Member States have transposed European legislation (see e.g. European Commission 2010), implementation research has perhaps been directed towards this particular research avenue out of pragmatic considerations for data availability. However, in the last couple of years, a strand of research has emerged wherein the practices of operative implementation in themselves have become the focus (Falkner et al. 2008; Gulbrandsen forthcoming; Versluis 2004, 2007). For instance, Falkner et al. have outlined how compliance with European rules may vary, depending on the administrative cultures in different regions – or ‘worlds of compliance’, and Versluis and Gulbrandsen have studied the practices and training of inspectors on the ground.

An underlying assumption of transposition research seems to be that compliance with European legislation is to be expected, and that non-compliance is what needs to be explained (see also Chayes and Handler Chayes 1993). If we start out from an assumption of bureaucracies being akin to the Weberian idealtype of a rule-bound administration, this is indeed the pertinent question to ask. If, however, we look at what implementation scholars have discovered over the last 50 years (Hupe 2011; Kaufman 1967; Lipsky 1980; Pressman and Wildavsky 1973) the question could just as well be turned on its head: Why does compliance happen at all? And especially: Why does compliance with *European* legislation happen at all? After all, the number of veto-players (Tsebelis 1995) or actors relevant to both shaping, taking and implementing European legislation is often larger than with rules stemming from other international organizations (IOs), given the multi-level structure of the European system.

In this paper, I try to examine this question by comparing how one national administration approaches rules stemming from two international organizations, the European Union (EU) and the International Maritime Organization (IMO), within the maritime safety policy sector. As these rule-

sets are vast and complex, I do not attempt to come up with figures on compliance. Rather, I have talked to the desk officers, inspectors and managers in charge of implementing these rule-sets, to see if there are discernible differences in how they approach EU- and IMO-rules. If I find such differences - and I do – the question then is how these differences can be explained. The rules themselves are often overlapping and share many important approaches (Ringbom 2007), so the answer probably has to be found in organizational and institutional factors. The ways in which processes are organized and resources allocated to them seem to me to suggest explanations for differing practices and attitudes, and exemplify the ways in which new, European orders come up against pre-existing international and national orders.

And so, the question asked here is this: How do organizational and institutional factors explain the processes of transposing and incorporating international and European legislationⁱⁱ into national legislation within the maritime safety policy sector?

In the following, I will first outline the theoretical background for the questions asked and the explanatory factors I expect to come into play. I will then move on to describe the thoughts I have had on case selection and the methodology I have used, before the section after that will present the empirical observations and materials. The last section discusses these findings, and draws some conclusions from them.

LEARNING THE ROPES – wherein we discuss questions of theory

In this section I will first discuss what I draw from the literature on implementation, before I discuss my expectations for explanatory factors.

We can conceive of implementation of international rules as happening on a continuum between indirect and direct implementation – akin to Hofmann’s indirect and direct administration (Hofmann 2008: 667). Direct implementation would be happening when the rulemaking organization – such as the EU or the International Maritime Organization (IMO) – itself implemented the rules and policies it had created. Conversely, indirect implementation would be any instance where any other actor implemented these rules and policies. In between these two ends of the continuum we can imagine different types of ‘composite’ implementation, where the IO and some other actor either shares responsibility for implementation, or where the IO is involved directly in other actors’

implementation activities, or where other actors are involved directly in the IO's implementation activities.

The two implementation opposites and the intermediate, 'composite' approach outlined above also correspond to idealtypes of international executive orders (Curtin and Egeberg 2008; Curtin 2009). Indirect implementation is what we could term the 'standard' method for the traditional intergovernmental order of multilateral organizations. IOs adopt rules in the forms of international conventions, codes and the like, and nation-states ratify and implement these rules, with little or no oversight or intervention from the IOs. In a similar vein, direct implementation corresponds to supranationalism, wherein the IO has taken over implementation tasks, bypassing nation-states and relating directly to citizens and other legal subjects. 'Composite' implementation can be seen as connected to concepts such as 'networked governance' (Kohler-Koch and Eising 1999), 'multi-level governance' (Hooghe and Marks 2001, 2004) and 'double-hatted' agencies in a multi-level administration (Egeberg 2006).

As 'new' governance modes are spreading, both nationally and internationally (Héritier 2002, 2003) (but see Treib et al. 2007: on the labels 'old' and 'new'), questions about how implementation occurs come to the fore as implementation structures become more complex. Implementation is not a black box any more – rather, it has been extensively studied, also in a European context. For instance, Treib (Treib 2008) distinguishes between three 'waves' of European implementation research. The first wave dealt with institutional efficiency, and in this wave 'clearly stated policy objectives and the availability of a well-organised state apparatus' (*ibid*:7) were the main explanatory variables for the outcomes of the implementation process of transposition, application and enforcement. The second wave dealt with 'degree of fit or misfit between European rules and existing institutional and regulatory traditions' (*ibid*:8) to explain implementation performance. The third wave was characterized by theoretical and methodological differentiation. Within this wave, many have focused on transposition, and transposition statistics as a measure of compliance with EU rules (*ibid*.; Sverdrup 2007). Others have focused on more operational aspects of implementation, showing how, for instance, inspectors (Versluis 2004), EU agencies' training activities (Gulbrandsen forthcoming) and national political cultures (Falkner et al. 2008) add another layer of complexity to the question of what engenders compliance with international rules.

Within maritime safety, studies have been performed both on compliance within the EU and on the global level. Focusing on operational aspects of compliance, Stiles (2010) has shown that governance-driven variables, such as a state's capacity to govern domestically, enhances compliance with IMO

rules on ship safety and piracy. Kaeding (2006) has shown that within the transport sector, only 39 per cent of the EU *acquis* was transposed on time during the period 1957 to 2004, and that this is mainly attributable to the level of complexity of EU directives, the use of national legal instruments that include considerable *de facto* veto players and short transposition deadlines. Taken together, we may surmise that the national capabilities for handling more or less difficult international legislation impacts on compliance. This seems to be in line with what Chayes and Handler Chayes (1993) described as decisive factors for compliance.

It is not strange then, that one of the main thrusts of EU efforts to enhance compliance over the last decades has been aimed at augmenting national capacities for timely transposition and proper enforcement. This was the rationale behind establishing EU agencies, which have become an integral feature of EU governance (Groenleer 2009). Even though these agencies have not necessarily lived up to the expectations EU Commission officials may have had, they may have provided arenas for mutual learning processes between national officials, and may have served as learning platforms for them through being nodes in transnational networks and by facilitating and organizing training activities (Groenleer et al. 2010; Gulbrandsen forthcoming).

The studies by Kaeding and Stiles mentioned above seem typical in their approach to compliance in two ways. Firstly, they rely solely on statistical measures for their analyses. Secondly, they describe *either* the IMO *or* the EU and their respective rulesets. Although EU member states have to implement both sets of maritime safety legislation, these are to my knowledge rarely studied alongside each other. However, the characteristics of these two organizations make it worth our while to do exactly that.

The EU and the IMO represent two distinct types of IO, and also represent two different types of executive orders (Curtin and Egeberg 2008; Curtin 2009; Trondal 2010). Whereas the IMO represents a traditional intergovernmental organization (IGO) with a single purpose, comparatively small secretariatⁱⁱⁱ and no supranational competences or decision-making bodies, the EU represents a complex, cross-sectoral organization with a comparatively large bureaucracy and several supranational competences and decision-making bodies – a ‘European experiment in democratic organization’ (Olsen 2010). As such, we would expect them to also embody different approaches to implementation of their respective rulesets: the IMO being closer to the notion of ‘indirect implementation’ and the EU closer to the notion of ‘direct implementation’. Thus, we would expect them to have different competencies and capacities relating to implementation.

However, we also know that EU member states have been reluctant to cede control over implementation to the EU (Groenleer et al. 2010; Stevens 2004). This would lead us to expect that there is less direct implementation than in a purely supranational situation, and that we would find some sort of compound implementation structure. An instance of this is what Egeberg has called 'double-hatted' agencies: the inclusion of national agencies that are formally detached from their national parent ministries into a multi-level EU administration (Egeberg 2006). The question would then be how the European level would go about creating such a structure. What organizational capacities are established at European level to stimulate national agencies to effectively implement European legislation?

Such national agencies as described above would normally also have the responsibility for implementing IMO legislation. Most administrations are organized after a sectoral principle (Gulick 1937), so that the type of international source of legislation is not as important for the division of labor within a national administrative system as the sector affected. This means that within the same structure – a national agency, for instance, we can expect to find processes for implementation of IMO rules and EU rules going on alongside each other.

To me, this provides an opportunity for investigating how the same officials – or colleagues within the same agency – relate to these two different organizations and the rules coming from them. If there is something to the notion that the EU represents a qualitatively new order compared to previous, purely intergovernmental executive orders in Europe (Curtin and Egeberg 2008; Curtin 2009), then we would expect there to be differences in how the EU and the IMO affect a national agency and its practices. If the 'old' order dominates in such a situation, we would expect perceptions of the EU within the national agency to be less positive than of the IMO, especially if the EU is seen to represent something different than 'business as usual'. We would also expect the allocation of organizational resources and the organization of processes to differ, to accommodate differing types of IO. As there almost certainly will be instances of non-compliance in any implementation situation, we should also expect to see these treated differently, depending on which organization's rules are not complied with.

As operational implementation is being done based on national legislation that incorporates international rules, we need to look at the transposition stage itself to identify any of the differences outlined above. Although transposition seen from 'below' constitutes rule-making rather than implementation, seen from the vantage point of IOs, it constitutes implementation.

As we know from organizational theory, organizations structure attention to problems and the allocation of resources (Egeberg 2003). The way in which resources are allocated in turn provide organizations with capabilities for influencing other organizations, persons and their environment in general. We would expect therefore, that the way in which IOs are organized and structured constrain or enable their possibilities for affecting how national administrations implement their policies, and that the resources they have at hand impacts on this. As has been outlined above, the EU is endowed with several capabilities that the IMO does not have. The EU has entities (agencies and the Commission) at the EU level geared at influencing implementation. It has more manpower than the IMO (the European Maritime Safety Agency alone is about the same size as the IMO secretariat), and has recourse to legal tools for enforcing compliance – something the IMO lacks completely. Although the IMO has a voluntary audit scheme, this is run by IMO member states as a sort of peer review system, and is – as the name says – voluntary for the time being. On the other hand, IMO legislation is more extensive than EU legislation, and EU legislation in this area is primarily based on IMO rules, although in many instances it is stricter or has a greater geographical or topical scope than corresponding IMO rules (Ringbom 2007). This suggests that the IMO might have a broader impact on national administrations.

After now having examined some of the literature in the field and briefly looked at what expectations we might derive from it, the time has come to go into more detail about case selection and methodology. Why maritime safety? And what empirical materials? This is the topic of the next section.

SEXTANT AND CHRONOMETER – wherein we examine our methodology

In this section, I will review case selection and methodology, beginning with why I chose maritime safety and the Norwegian administration.

Why have I selected to study transposition within maritime safety? Certainly, pragmatic reasons and coincidences have been in play, but there are two reasons why the maritime safety sector is interesting. First of all, the maritime sector is one in which much is at stake. Maritime transport affects world trade and economy (Stiles 2010: 139), as well as national security and prestige. The largest ships are huge constructions, and take up a lot of capital. In turn, the stakes at hand ensures that involved actors have an acute interest in the policies created in the sector.

Secondly, the institutional landscape within the maritime safety sector provides an interesting testing-ground for comparing transposition practices in national administrations across the IO sources of international rules. From the first Safety of Life at Sea (SOLAS) convention was drafted in 1913 in the wake of the Titanic disaster, maritime safety has been a subject of international concern. In 1958, what is today known as the IMO started operations (International Maritime Organization 2010), and has since become the main rulemaker on maritime safety among IOs. My informants conceive of it as a very intergovernmental organization, where states are and should continue to be the main players, and the secretariat only a facilitator of intergovernmental negotiations. As such, it represents an approximation to an ideal type IGO within the intergovernmental multilateral executive order outlined by Curtin and Egeberg (Curtin and Egeberg 2008; Curtin 2009).

The European Union, on the other hand – in other cases a pioneering international legislator – did not enter into action in the maritime safety sector until the 1990s. Until then, member states had fiercely resisted Commission attempts to create Community legislation within the sector, preferring to go it alone or within intergovernmental bodies. It was only when the Maastricht treaty came with less ambiguous wording about maritime transport and subsequent shipping disasters then created a need for action that the EU ended up with maritime safety legislation (Stevens 2004). Since then, the EU has become a more active legislator, enacting several legislative ‘packages’, as well as individual acts. These do not cover all IMO legislation. Rather, it overlaps with IMO legislation, and is mostly based on it. In some cases, EU legislation on maritime safety moves beyond IMO-legislation, for instance in topical scope (mostly by making non-binding IMO instruments binding) or in geographical scope (for instance by expanding rules regarding international shipping to also deal with national shipping) (Ringbom 2007). With this, the EU has brought maritime safety within EU competence (or, to be formally correct, mixed EU-member state competence), with all that entails for supranational enforcement via the European Commission and the European Court of Justice and for the role of the EU within international negotiations on the subject. In addition, the EU has set up the European Maritime Safety Agency (EMSA), which was functional from 2002 (European Maritime Safety Agency 2010). Among the tasks of EMSA are inspections of national administrations, running databases and organizing training activities for national officials. However, national administrations are still the main implementors of EU legislation. All in all, the EU may be seen to represent a new type of executive order in Europe, where supranational elements come to the fore (Trondal 2010). Being a relative latecomer to maritime safety policy, the EU and the executive order it represents could be seen as a challenger or changer of the pre-existing intergovernmental executive order in Europe.

As such, we would expect EU rules and practices to be less acceptable or appropriate in an institutional setting dealing with maritime safety than IMO rules and practices. If the EU still manages to be seen as a legitimate actor or locus of authority, then this strengthens the case for a change having occurred with regards to the make-up of executive orders in Europe. As such, this study would help provide us with fodder for 'theoretical generalization' (Ritchie and Lewis 2003), although we could hardly regard this case as a 'critical case' (Yin 1994: 38).

The question then becomes where we study this. As previously outlined, the transposition stage is the ideal place to compare the impact of EU and IMO rules and practices alongside each other within the same organization. Therefore, I have selected to look at a national administration working with transposition. As I am based in Norway, I have had easier access to the Norwegian maritime safety administration structures than to other countries' administrations. As a consequence, I have used the Norwegian Maritime Directorate (NMD), and its parent ministry, the Norwegian Ministry for Trade and Industry (MTI), for this study. But not only practical reasons have come into play. Norway is a large maritime nation, with a diversified maritime cluster of shipping companies, insurers, legal consultants, classification societies, ship builders, ports and more. Also a large registry, Norway is a somewhat important actor within the IMO, and has been quite attached to the IMO since the organization was established. Norway is not an EU member, but is intimately involved with the EU as a member of the European Economic Area (EEA). Norwegian administration officials participate on an almost equal footing with their EU member state counterparts in most shipping-related processes, and are bound in practice to implementing EU legislation to the same extent that EU members are^{iv}. As such, the involvement of Norwegian administration officials with the EU is comparable to that of a full EU member states' officials. Still, we would expect the EU to be more of an 'odd one out' seen from a Norwegian point of view. This entails that if we do find that the EU is seen as a legitimate actor and locus of authority within the Norwegian administration, this would further strengthen the case for the EU being able to provide change in executive orders in Europe.

Based on the case selection, I have performed interviews with 35 officials within the NMD, ranging from the then acting Director to case-handlers and advisers and also 4 officials within the MTI. Within the NMD, I interviewed senior and mid-level managers, as well as staff, from all departments not dealing with archive, personnell, communication or finance. Within the MTI, interviewees were mid-level managers or advisers from the maritime department. These interviews were semi-structured in-depth interviews (Rubin and Rubin 1995), ranging from about 25 minutes to 2 hours in duration. They were based on a topic guide I had developed in advance, and were conducted over a period ranging from April 2009 to May 2010. Interviewees were asked about their day to day work: activities

related to international affairs, their contact patterns, perceptions about processes and how they perceived different actors around their organization. Interviewee selection was assisted by their managers. I wanted both NMD ‘veterans’ as well as new employees, and both staff with and without international experience. All interviews were recorded with a digital recorder, and then transcribed. I performed inductive coding on the transcripts, and have used this to organize empirical materials from the interviews. This has then formed the basis for my analysis. As all interviewees were promised anonymity, they are referred to only by a code in this study. Ministry officials have codes starting with M, and NMD officials have codes starting with SD. I believe the promise of anonymity helped foster an empathic connection between me and interviewees that helped create the necessary confidentiality for interviewees to be comfortable, and that in turn also aided my own understanding of what the interviewees’ worlds are like (Fontana and Frey 2008).

A danger of analyzing qualitative materials is that it is easy to overlook that which contradicts your own preconceptions or other materials. I have actively tried to seek out contradictions and ‘deviant cases’.

I have endeavoured to compare aspects of how IMO and EU legislation is treated within the NMD and MTI. As such, this case could perhaps have been called a comparative case study. However, as the comparison in the next section will show, following the comparative logic of Locke all through is not possible here, as practices are compared within one and the same organization, where one and the same official might be working with both sources of legislation. This muddles the picture, and makes it difficult to either talk of a ‘most similar systems’ design or a ‘most different systems’ design.

In the next section, I will introduce the empirical materials, before moving to analysis and conclusions.

CAUGHT IN THE NET – wherein we examine our empirical findings

In this section, I will first introduce the organization of the NMD and MTI, as well as the standard procedures for transposing legislation, as reported by informants. Then I will move on to compare resource and capability aspects of these processes, as well as the attitudes of informants.

The organization of the NMD and MTI

The MTI is the ministry responsible for shipping and maritime issues. Other transport issues are the purview of the Ministry of Transport and Communications. Within the MTI, maritime safety issues fall under the Maritime Department, and then mostly under the Section for maritime safety and regulation. On some issues, the Ministry of the Environment (ME) retains responsibility for environmental maritime safety issues. Apart from laws, all legislative activity with regards to maritime safety that are under the purview of the MTI is delegated to the NMD. The relevant MTI section has 9 staff, and only consists of legal personnell. The NMD consists of approximately 300 staff, the largest share of which are technical experts – mariners or engineers. The NMD constitutes an executive agency that is subordinate primarily to the MTI, and partly also to the ME. The MTI and ME govern the NMD through ‘tildelingsbrev’ – letters of appropriation – which outline the main goals for the agency, and through signals in budget propositions to Parliament. There is no separate NMD board.

The NMD is organized as a matrix organization. The organization is divided into departments, of which Strategic safety (a staff function department), Ships and Sailors, Regulation and international affairs and Control and inspection are the relevant ones for this study. These departments are again subdivided into sections. Across departments there are disciplinary groups dealing with specific issues, e.g. ship stability, and ad hoc groups dealing with specific legislation, international meetings and other projects. Transposition, incorporation and other rule-making is coordinated by the Regulation and international affairs department, which is equipped with coordinators for IMO, EU and International Labour Organization (ILO) legislation.

Standard operating procedures

With regards to IMO legislation, this usually derives from meetings within the IMO system where Norwegian officials have participated. Thus, when officials return home, they inform their colleagues of the outcomes of meetings, and alert their managers and colleagues to any legislative changes. The IMO coordinator is responsible for drawing up lists of new legislative acts that need to be transposed, and a group of officials from Regulation and international affairs and the relevant technical departments are then tasked with developing the corresponding Norwegian legal text(s). During this process, the MTI is kept abreast of developments, and only intervenes when it is deemed politically necessary by the degree of conflict that arises from the new legislation. All Norwegian legislative acts have to go out for public consultations, and it is during this consultation stage that reactions normally occur – and are deemed relevant. If the legislative act concerned necessitates changes in law statutes, the MTI is in charge of the process instead. However, this only rarely occurs.

With regards to EU legislation, the process is somewhat different. Norwegian officials are involved in Commission expert group consultations at early stages of the EU policy process, as the agreement on the EEA states. Then, Norwegian authorities are not formally involved until the legislative act has passed through the EU system, unless the act comes out of comitology^v. At this stage, NMD officials write memoranda to the MTI about the consequences of the new acts, suggesting which position to take on them. The memoranda are then submitted to the Special committee on transport, which is an inter-ministry committee. When the memoranda are cleared in this committee, the MTI gives its advice to the EEA Committee in Brussels, where the European Free Trade Association (EFTA) and EU sides meet to incorporate the acts in the annexes to the EEA Agreement. In some cases, the Norwegian Parliament may have to approve acts before they are incorporated by the EEA Committee. When so incorporated, the acts are then to be transposed into Norwegian legislation, and this happens in the same manner as for IMO acts: The EU coordinator draws up a list of new acts that need to be transposed, and other officials start to draft and finalize the relevant Norwegian texts. The MTI retains control of the political process towards the EU, other ministries and the Parliament, and the NMD works out the technical aspects of transposing the legal acts.

It seems clear that although the actual transposition itself is managed in much the same way – after the international act has become binding under international law, its transposition is in the hands of NMD officials in similar manners – the political setting surrounding EU legislation is far more complex and requires much more involvement of the MTI than does the IMO.

Resources and practices

In this part, I will examine how resources are allocated towards transposition of EU and IMO legislation within the NMD, and what practices have developed. I will look at the number of people involved, the amount of legislation from both organizations, the training activities undertaken, how international networks come into play, how audits affect the organization, how electronic resources are made available from the international level and how sensitive non-implementation questions seem to be.

The number of people involved

Within the NMD, there seems to be a marked difference in the number of people involved with IMO legislation versus the number of people involved with EU legislation. Of all the sub-sections involved, only two seemed to deal mostly with either EU legislation or national legislation – these were respectively the section for leisure crafts and the section for mobile drilling units under the Department for ships and seafarers. In all other sections, the IMO was consistently mentioned as an

important rule-maker relevant for their work by almost all informants. With the EU, the picture was more patchy. Within the same section, colleagues could report different views on the importance of the EU for their daily work. Take for instance SD028 and SD029, who work in the same section:

“We feel that is very much on the sidelines – what they do in the EU, towards the ILO, for instance.”

SD028

“I would say that when it comes to working conditions for seafarers, the EU has had more to say for their welfare than any other international organization.”

SD029

Although contradictions may not be quite as clear elsewhere, involvement with EU legislation seems to be rarer than for IMO legislation. This is also borne out by managers. One mid-level manager (SD037) reported that out of that sections staff, 6-7 persons were involved in IMO work, but only 1 were involved with EU affairs. Another senior official reported:

Interviewer: “Do you think that EU-work is important for Norway in relation to IMO-work?”

SD017: “I think we expend more resources on IMO-work. EU-directives are mostly forced on us, ‘here you go, implement!’ But if we do a good job [in the IMO,] that may help when these directives come from the EU. But we have our own EU-coordinator, and we’re part of COSS and MARSEC [EU Committees] and such. So we are part of that too. But in the NMD we expend less resources on the IMO, although Norway as a whole, we have people like [NN] working with EU issues in the Ministry, maybe only EU issues.”

Amount of legislation

There is a difference in the amount of legislation coming from the IMO versus that coming from the EU. According to a Commission official I interviewed for another study, about 40 percent of IMO legislation was outside EU competence. The number of IMO legal instruments quite overshadow the amount coming from the EU within the maritime safety sector (see also Ringbom 2007). This not only provides an important part of the explanation for why more people are involved with IMO than with the EU within the NMD, but it is also an important characteristic of NMD processes. IMO rules and changes to rules are more ‘business as usual’ than EU rules for most officials.

Training

As outlined above, the creation of EMSA created capabilities for the EU with regards to, inter alia, training of national officials. EMSA is not the only international actor in the field that provides training, however. Officials reported that they, colleagues or subordinates had been to training events organized by the ILO or by the Paris Memorandum of Understanding on Port State Control (Paris MoU). The latter is a European IGO (with Canada and Russia as members as well) that develops the port state control regime in its member states, which provides a sort of peer review between states of how their 'flag' is doing. In close cooperation with EMSA, it provides training courses for ship inspectors and other national officials (see Gulbrandsen forthcoming for more details on how this affects national inspectors). There are no comparable activities organized by the IMO.

Networks

Both the IMO and the EU seem to be facilitating networks between national officials, albeit in different ways. IMO policy-making meetings^{vi} are large, and involve national delegations that may be quite extensive in size. I observed the 87th meeting of the Maritime Safety Committee of the IMO (MSC 87), and there were several hundred delegates present. Although some states attend with only one or two officials, most seemed to have larger numbers present. This means that many officials from national administrations have a chance to meet and interact at the many IMO meetings that take place in committees and working groups at IMO headquarters in London throughout the year.

The NMD management and staff seemed to put a premium on participation at IMO meetings. Although not everyone who had participated at IMO meetings had maintained contacts with officials in other countries after the meetings, several reported that making bilateral connections was helpful for contacting other nations' officials later on. On one occasion, one official reported that he had also participated in a network meeting aimed at discussing practicalities around the implementation of rules during an IMO meeting, but this was initiated by another member state. Although the IMO has a committee named 'Flag State Implementation', this committee seems to be dealing with a plethora of issues, only some of which can be said to involve discussions around practical implementation or transposition.

In comparison, the involvement of NMD officials in EU policy-making processes is quite marginal. As most EU committee meetings are confined to fewer days and smaller spaces than the vast IMO committees, only one or two officials normally attend from the NMD. The number of committees are also fewer, and so, only a limited number of officials have the opportunity to attend EU policy-making meetings. Also, in the maritime safety area, the number of network meetings aimed at

discussing implementation seem to be limited. An important exception seems to be for leisure craft. However, through training sessions under the auspices of EMSA, several officials, especially ship inspectors, are involved in building networks, and EMSA also facilitates the use of electronic networks and tools.

No matter how these networks are attained, however, a clear majority of those I have interviewed have reported that they have occasional or frequent contact with officials in other countries. This is mostly confined to other Northern European and Scandinavian countries, but these networks seem to be useful for getting input on how rules are to be understood, and how practical issues have been resolved by other authorities. In addition, these networks are used on occasion to solve individual problem cases regarding Norwegian ships in a foreign port, or vice versa. These networks can hardly be called a dominant feature of transposition and implementation processes, but they are certainly relevant for grasping how international agreements come to be understood by national officials.

Bilateral contacts seem to be more important to most officials I have interviewed for understanding international agreements than the secretariats or agencies of IOs themselves. But these IOs, and in particular the IMO's policy-making meetings and EMSA's training activities, provide important forums for making connections across countries, which may again be used for bilateral problem-solving.

Audits

Both the IMO and the EU (through EMSA) perform audits of member states. During these audits, member states' implementation – both on the books and in practice – of international rules are checked. However, there are important differences in how the audits are organized.

The IMO's audits are done under the so-called Voluntary Member State Audit Scheme. Member states have to request an audit, and a team of auditors from other member states are appointed by the Secretary General of the IMO (International Maritime Organization 2011). The outcome of this audit is a set of recommendations to the Member State in question.

When EMSA audits, it is not voluntary. The member state in question has to submit to auditing, and also has to remedy any short-comings found during the audit. In the case of Norway, both an IMO audit and an EMSA audit had been performed between 2007 and 2009. According to one senior manager:

“Yes, we’ve had them [EMSA] here too. It’s not more than a month since they were here, regarding port state control. (...) And we’ve had a corresponding thing on ISPS, there was a gang

here. (...) So we see them, but that's just checking how we follow up on the EEA Agreement, it's really nothing more. "

SD001

This manager then went on to discuss concrete findings from this audit, before turning to the IMO audit:

"We've had voluntary audit by the IMO, which was only directed towards how Norway had implemented all the IMO's instruments in the Realm, which was – I wouldn't call it an educational round, but it was a round where they didn't find anything we didn't know about. (...) There were some, let's say, minor details, but no alarming stuff."

In both cases, there had been findings, but the findings related to the IMO audit seem to have been more known beforehand, whereas the EMSA audit's findings seemed to require more action from the NMD. Whether this was coincidental or not is hard to say, but we can at least not rule out that the NMD had to put more effort into satisfying EMSA than the IMO.

Electronic resources

According to informants, electronic databases like EMSA's rulecheck database and port state control tools are helpful in every day work. These tools make it possible to identify which IMO and EU rules apply to a specific ship, and when a ship was last inspected. The IMO does not administer any comparable databases, but maintains an overview of IMO instruments and their ratification status.

The sensitivity of non-compliance

During interviews, I two times encountered situations where informants were unwilling to go into detail about questions of non-compliance with international rules. These incidents were both related to EU instruments. One was the following conversation with a senior staff member in the NMD:

Interviewer: "I would assume that you are loyal, that you don't drag things out because you don't like an EU rule?"

SD006: "We can talk about that another time, but it's quite interesting, some of the things that have happened with implementing EEA-law. At least you can question it, but..."

Interviewer: "OK."

SD006: "Let's maybe take that in a year's time or so?"

In another case – perhaps regarding the same set of rules, this happened when interviewing one manager. First, this person was talking about a mismatch between a set of EU rules and Norwegian geographical conditions and industry structure. And then:

SD020: “It’s very hard to be heard on this, and we’ve had to compromise there. And that’s not good, you know, if a directive isn’t implemented... [Seems to remember my digital recorder.] Now...”

Interviewer: “Yes, no...”

SD020: “I”

Interviewer: “I hope, no, it’s clear that I’ll write...”

SD020: “This is a sensitive topic, this! I don’t want it to get out!”

Interviewer: “No, I won’t quote you on it. (...)”

SD020: “Thank you, thank you.”

Interviewer: “So...”

SD020: “No, but it’s, it’s difficult. It’s all the time difficult.”

Interviewer: “So it’s politically sensitive as well?”

SD020: “Oh yes, absolutely! We must not come out with this before the election!”^{vii}

In comparison, I never encountered this kind of sensitivity towards questions of non-compliance with IMO instruments. On the contrary, staff seemed to be keenly alert to problems with regards to updating rules and keeping track of the vast IMO rule-set, but never seemed unwilling to talk about it, or worried about the ramifications of it getting out, and several discussed how they were going about correcting these problems.

As far as I could gather, there were never any instances where non-compliance had been a deliberate choice. However, it was clear that the consequences of non-compliance with EU rules were more politically troublesome to these officials than non-compliance with IMO rules.

After this brief run-through of several factors involved in NMD and MTI dealings with transposition issues, we can turn to connecting the dots – what does the differences we have observed entail?

DEAD RECKONING – wherein we follow the findings with some conclusions

The above comparison has shown that there are some important differences between the way EU and IMO issues are treated within the NMD and MTI. These seem connected to issues of resources and capacities, as well as to institutional norms.

It seems quite clear that the EU and the IMO possess quite different amounts and types of resources at the IO level. The IMO is more inclusive with regards to national officials in its decision-making processes. This is naturally so, as the IMO is almost exclusively the member states' forum. The EU is much more a mixed polity, with several different types of stakeholders at the wheel. This in turn ensures that the IMO provides a forum that better enables the creation of bilateral networks between member state officials than does the EU. Although the EU provides such forums as well, these are mostly limited to lower-level officials that deal with inspection tasks and case-handling. However, the EU retains several capabilities that the IMO does not have. The EU provides training and electronic databases that the IMO can not match. These are concrete tools for use in national officials' day to day work.

The EU also has another capability that is perhaps the most important one. Being a supranational, cross-sectoral entity, the EU is far more able to enforce its decisions. Audit findings must be followed up on, and failure to comply with EU rules carries legal and material consequences. Although the port state control regime provides a peer review of sorts between IMO member states, this regime has direct consequences only for individual ships and not for governments – and is also perhaps the strongest in Europe, where the PMoU and the EU together have strengthened this regime.

However, this image of resources and capabilities is the reverse of how the NMD has allocated resources to working with the IMO and the EU, respectively. As IMO legislation is much more comprehensive, and IMO policy-making processes more time-consuming, the number of NMD staff involved in IMO issues probably far outstrips the number of staff involved in EU issues. In addition, the EU is a new-comer.

Several interviewees made statements that indicated that EU instruments were not always as welcome. The IMO was seen as the main decision-making arena, and there were worries about regionalization of the global maritime safety regime. In addition, terms such as 'forced upon us' and 'silly' were some times used conversationally about EU rules, but never about IMO rules. The relationship with the EU seemed more antagonistic than with the IMO. And, as we have seen above,

it also seems more politicized – with stronger involvement of the MTI and a higher degree of sensitivity attached to non-compliance than in the case of IMO instruments.

So where does this leave us when it comes to the case for changes to the executive order in Europe? First of all, the EU seems to have acquired capabilities that are different than those of a traditional IGO like the IMO. In some cases, they are more extensive, such as when it comes to training, auditing, secretariat and electronic resources. In others, like the inclusiveness of decision-making processes, they are less extensive^{viii}.

Secondly, the IMO seems to be the most legitimate IO of the two among agency officials. Interviewees are more appreciative of the IMO than of the EU. This can probably be ascribed to three factors: Working with the IMO is the rule, not the exception in the NMD –with the EU it is the other way around. The IMO has been around for longer than the EU, and has had a chance to become more ingrained as a source of authority. And the IMO is these national officials' 'own' forum. The EU is more alien, and also involves non-professionals in its decision-making.

Thirdly, the EU seems to 'carry a bigger stick'. Although the IMO may be the most legitimate IO in the eyes of these officials, it is the EU that seems to have the strongest chance of getting its legislation complied with. The binding nature of EMSA audits, the legal consequences of non-compliance, and the political sensitivity of non-compliance, taken together with the more 'patient' approach to IMO rules seem to indicate that the EU is in a better position to have actual effects – on those things the EU focuses on.

In conclusion, the EU seems to represent a new kind of way of doing things. However, it has not 'crowded out' the IMO in the minds of national officials. Rather, it seems to have layered itself (Thelen 2003) onto the previous intergovernmental order, creating a mixture of intergovernmental and supranational elements that coexist and interact. It is important to observe that this does not necessarily represent 'progress', at least not uncontested progress, towards some sort of supranational future. The somewhat more antagonistic attitudes and politicization between the EU and national officials in this case may point to a need for the EU to be wary of what is lost in a process of streamlining Europe, where some sort of 'auditocracy' is being introduced. Although compliance may increase, legitimacy costs may ensue.

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ENDNOTES

ⁱ In the following, I will use 'transposition' as a short-hand for both transposition and incorporation. These are two different legal techniques for making international rules binding at the national level, but in relation to the questions discussed in political scientists' discourse on legal implementation, the distinction is mostly irrelevant.

ⁱⁱ I use the term 'legislation' broadly, to cover all binding rulesets from an IO or state, no matter the term normally used for them (conventions, codes, treaties, directives, regulations, legal instruments, legislative acts, laws etc.).

ⁱⁱⁱ The IMO secretariat consists of about 300 staff, whereas for instance the International Labor Organization (ILO) secretariat consists of about 3000 staff.

^{iv} Within the EEA agreement, there exists a formal possibility for reservation against EU legislation, but this clause has never (yet) been applied.

^v Norwegian officials participate in comitology proceedings.

^{vi} Policy-making meetings is here broadly defined as all meetings aimed at developing new policies or rules, even if the rules are not actually adopted during this meeting.

^{vii} The Norwegian parliamentary elections were in the autumn of 2009, after these two interviews were generated.

^{viii} I am here only discussing inclusiveness with regard to national agency officials, not with regards to the general public.